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SERVICES

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MEMORANDUM NO.21-(97-98)

TO: State Agency Purchasing Directors

FROM:  George C. Banks, CPPO
Director, State Purchasing

SUBJECT: Invitation to Negotiate (ITN)

The purpose of this memorandum is to clarify the current procedure for an agency to use an Invitation to Negotiate as an alternative process to Invitation to Bid or Request for Proposal.

Until a revision is made to our current rules, agencies cannot proceed with an Invitation to Negotiate without prior approval from this office. However, an agency head may make a one-time request for this authority. Upon approval, the attached procedures are to be utilized in this process and agencies may proceed in the same manner they do when selecting an invitation to bid or request for proposal.

If you have any questions, please contact Buddy Barker at 850 488-8131, Suncom 278-8131 or e-mail barkerb@dms.state.fl.us

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GENERAL NEGOTIATION GUIDELINES

Review of the required procurement may necessitate negotiation

- Under competitive negotiation for commodities/services, the terms, the price, the method of delivery, and the conditions of performance may be negotiable. The negotiated contract must meet the defined needs of the agency including cost considerations. Management's involvement is essential to successful negotiations.
- Negotiation may be appropriate: a) when an Invitation to Bid or Request for Proposal will not provide the solution the agency requires. b) When the qualifications of a contractor or the terms of the working relationship required to achieve the goal of the contract are more critical to the success of the program than the price. c) When single source procurement is determined to be the only available method

Processes For Negotiation

- Competitive negotiation

Competitive negotiation works best when highly technical commodities/services such as computer programming, staff support and telephone system maintenance are involved or when the contract requires highly specialized or professional staff, as do medical contracts and social commodities/services contracts under which counseling is provided to clients.

Competitive negotiations require the use of the Invitation to Negotiate (ITN), form Pur 7105. The following methods do not preclude alternative negotiation models. The methodology selected must be clearly defined in the special conditions of the ITN and require documentation in the agency file.

COMPETITIVE METHOD A

STEPS: When using Invitation to Negotiate

1. Statement of qualifications; no prices are solicited.
2. The most qualified respondents are selected as finalists.
3. Interviewed by an evaluation panel and ranked in order of their qualifications; prices typically are not submitted until after they are ranked.
4. Price and the scope of work are negotiated with the first-ranked offeror until an acceptable contract price is established, or it is determined an acceptable agreement cannot be achieved with such vendor.
5. If negotiations fail with the first ranked offeror, negotiations may begin with the second-ranked offeror, and so on until there is an agreement on an acceptable contract.

COMPETITIVE METHOD B

STEPS: When using Invitation to Negotiate

1. Offeror qualifications are requested, price also can be requested, provided however that pricing is subject to further negotiation.
 2. After the evaluation of responses, offerors most likely to be considered for award are selected and interviewed.
 3. Finalists are then selected for negotiations covering both the price and content of the proposal.
 4. The award is made to the offeror with the best combination of proposal, qualifications, and price.
- Characteristics of competitive negotiation

First, the scoring; interview and negotiation process permits in-depth analysis of every offeror's qualifications and capabilities and not just those of the one with the lowest price.

Second, the commodities/services specifications and price may be negotiated to meet the government's needs. If the original prices are too high, negotiation helps bring them within budget. The scope of work also may be negotiated.

Third, the ability to negotiate a price is an effective technique in a market in which offerors may have little or no competition.

Fourth, government staff without experience in negotiation can be at a disadvantage dealing with experienced private sector vendors who have trained negotiators on their staff.

The entire process must be managed carefully to make sure that evaluations and final award are as objective as possible and that every offeror receives fair and equal treatment.

NON-COMPETITIVE NEGOTIATIONS

- Single source procurement method

Only one source is available to negotiate

STEPS:

1. The ITN form may be used in most single source purchases since this provides an organized structure for general terms and conditions.
2. To the extent possible, the fair market value of the commodities/services to be procured is identified. An estimated value may be determined by contacting other users of the contractor's commodities/services or by identifying the costs paid by area local government for similar commodities/services.
3. A draft contract is prepared specifying the needs of government.
4. The extent of commodities/services to be delivered and the price are negotiated with the contractor.
5. When an agreement is reached, the final contract is submitted for any required approvals.

NOTE: Agencies should consider outside consultants to assist in any complex negotiations

CONSIDERATIONS IN NEGOTIATING THE CONTRACT

- Acceptance of a proposal without negotiating will almost certainly result in paying too much for the commodities/services.
- The negotiation team
Negotiation team is chief negotiator plus one or more resource persons familiar with the details of the commodities/services area and the in-house costs of the commodities/services. Chief negotiator is the principal spokesperson; other team members take part in the discussions in coordination with the chief negotiator.

Conducting Negotiations "The rules of the game"

- Be prepared. Know the subject matter. Establish the government's bargaining position and strategy well before negotiations begin.
- Use one negotiator. The other members are resources called upon as required by the principal negotiator.
- Negotiate with those in authority. When in doubt, ask for written evidence of the negotiator's authority to make binding decisions for the contractor.
- Negotiate high priorities first. Negotiate the critical elements of the contract first.
- Be patient. Do not rush the negotiation sessions, but make each session productive. Be patient, but be focused. Do not let proceedings digress from the specific topic of discussion.
- Use the competition. The contractor knows that the government places a high priority on cost, and the contractor usually expects to be required to lower the cost to obtain the contract. The contractor is also aware that the next-ranked firm is waiting in the wings if negotiations are terminated.
- Consider all parts of the proposal and subsequent terms proposed by the vendor. If the contractor offers an unacceptable term, condition, or price, do not dismiss it outright; instead; present an alternative or modification. Although there are times to take a hard line, repeatedly rejecting proposed terms without discussing alternative approaches can antagonize the contractor's team.

- Avoid open conflict. Negotiation is a potentially volatile exchange that can unexpectedly escalate into confrontation. Remember that after negotiations are concluded, both sides must work together for the life of the contract. Avoid open conflict with the contractor's team, and always work toward an outcome based on respect for the other's position.
- Use the power of silence. Agree, disagree, and rebut-but know when to keep quiet. Clearly express high priority issues. If the government negotiator remains silent rather than challenge an important issue in the early stages of negotiation, the contractor's team may assume that the issue is relatively unimportant.
- Don't be intimidated. Do not be intimidated by the presence of powerful executives on the contractor's team-they may have been included for the sole purpose of impressing, awing, or intimidating the government team. Remember that intimidation works only if the other team lets itself be intimidated.
- Put it in writing. To avoid renegotiating settled issues later, list all the issues resolved at the conclusion of each session and require both principal negotiators to sign the list.
- Strive for a win/win solution. Neither party leaves negotiations with everything hoped for at the outset. Be prepared to yield on minor points to protect more important requirements. Never try to win it all; instead, resolve differences through acceptable compromise so that both parties are satisfied with the results.

What to Avoid "Restraints on Competition"

- Improper communications with vendors.
- Unnecessary restrictions on vendor qualifications.
- Unnecessary restrictions in specifications.
- Specification changes without clear communications.
- Letters of intent.

- Failure to record all agreements to revisions.

Acknowledgement:

- "Service contracting a Local Government Guide" published by the International Management Association
- "Purchasing & Practices 1997 5th Edition State and Local Government Purchasing" published by the National Association of State Purchasing Officials.

INVITATION TO NEGOTIATE

There are distinct procurement situations where one of the three formal procurement methods would be better suited for acquisitions of commodities/services.

The three are:

- A) INVITATION TO BID (ITB) - Is used when the purchaser knows exactly what is required. Bid is evaluated strictly against the General Terms, Special Conditions and Specifications of the ITB. This is the most popular acquisition method used in formal government procurement, and is usually utilized in the acquisition of commodities.
- B) REQUEST FOR PROPOSAL (RFP) - This method is used when the purchaser has a general idea of what is required, but cannot develop the entire specific Special Conditions and Specifications which could be used in an ITB. Each proposal is evaluated against each of the other RFP responses using a point system with points given each proposal by an evaluation team. This method is more often utilized in the acquisition of services.
- C) INVITATION TO NEGOTIATE (ITN) - This method is used when an ITB or RFP will not provide appropriate mechanism to purchase the needed commodities or commodities/services. This method brings together vendors, which may be capable of providing the required commodities/services. If one or more of the following criteria apply, chances are an ITN is the most applicable purchasing method.
 - 1. The scope of work for the contract cannot be accurately and completely defined by the agency. This often occurs for acquisitions of rapidly changing technology, outsourcing, or complex services.
 - 2. The commodities/services can be provided in several different ways, any of which could be acceptable. This often occurs for acquisition of emerging technologies or complex services.
 - 3. Contractor qualifications and the quality of the commodities/services to be delivered can be considered more important than the contract price.
 - 4. The responses may contain innovative solutions that differ from what the agency may have requested and this process allows for those types of alternatives to be considered.
 - 5. The responses may contain a different level of commodities/services than that requested, requiring negotiation to reduce price or services to match available contract funds or increase price to meet a higher level.

	PROCUREMENT METHODS		
	REQUEST FOR PROPOSAL	HYBRID - RFP AND NEGOTIATED	INVITATION TO NEGOTIATE
STATEMENT OF DESIRED SERVICES	Deliverables, approach to work and terms are well-defined	Deliverables, approach to work and terms are well-defined but open to negotiation	Open to consideration of alternative scope of work, approaches and terms
VENDOR SELECTION	Published criteria used to rank vendors, then select vendor with most points	Published criteria used to rank and narrow field of vendors, then negotiate with select group for final selection	Screening criteria then evaluation (not necessarily using points)
VENDORS RANKED BY	Points earned for qualifications and cost	Same as RFP	Select vendor who represents the best fit for the State based on points or relative qualifications (may include cost)
AUTHORITY FOR PROCUREMENT	Exists	Must request authority to negotiate from Div of Purchasing but precedent established with software RFP	Must request authority to negotiate from Div of Purchasing
MBAAO REVIEW	Yes	Same	Same as RFP
ADVERTISEMENT	FAW and/or FCN	Same as RFP	Same as RFP
ADVERTISING PERIOD	Minimum of 28 days	Same as RFP	Minimum 10 days
RESPONSE PERIOD	Minimum of 28 days	Same as RFP	Minimum 10 days
OPPORTUNITY FOR PROTEST	When RFP is released, amended and award posted	When RFP is released, amended, and vendors selected for negotiations posted	When ITN is released and vendors selected for negotiations posted
APPLIED TO SELECTING IMPLEMENTATION CONTRACTORS			
MINIMUM QUALIFICATIONS AND SELECTION CRITERIA	Define and publish in RFP. Cannot be changed as RFP process goes forward without amending RFP (then an opportunity to protest the changes).	Same as RFP	Define for internal use. May also publish in Invitation to Negotiate for vendor self-screening. Can adjust as negotiations/selection progresses.
INITIAL SCREENING / SEPARATION	Use established criteria as stated in RFP	Same as RFP	Use established criteria
CLARIFICATION OF QUALIFICATIONS	Contractor presentations and initial interviews	Same	Same
SECOND SEPARATION	Use established criteria as stated in RFP	Same as RFP	Use established criteria and additional ones
ADDITIONAL INFORMATION FOR SELECTION	Secondary interviews	Same	Same
CONFIRMATION OF QUALIFICATIONS	Reference checks	Same	Same
FINAL SEPARATION	Based on final scores; one vendor chosen	Based on final scores; may include more than one vendor in negotiations (no need to define number of vendors before final selection)	Based on consensus of selection/negotiations team
NEGOTIATIONS	No	Yes	Yes